

CERTIFIED FOR PARTIAL PUBLICATION*

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

STUMP'S MARKET, INC.,

Plaintiff, Cross-defendant and
Respondent,

v.

PLAZA DE SANTA FE LIMITED, LLC,

Defendant, Cross-complainant and
Appellant.

D058769

(Super. Ct. No. 37-20009-00052809-
CU-CO-NC)

APPEAL from a judgment of the Superior Court of San Diego County, Robert P.
Dahlquist, Judge. Affirmed as modified.

Horvitz & Levy, Peter Abrahams, H. Thomas Watson, Katherine Perkins Ross;
Wayne Thomas & Associates, Timothy D. Lucas, A. Kerry Stack; Law Offices of
Charles S. LiMandri, Charles S. LiMandri; Law Office of Franco Simone and Francesco
Simone for Defendant, Cross-complainant and Appellant.

* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for
publication with the exception of parts I and II.

Burke, Williams & Sorensen, Ronald F. Frank, Joseph P. Buchman, Mark J. Mulkerin and Michele L. Graeler, for Plaintiff, Cross-defendant and Respondent.

Plaza de Santa Fe Limited, LLC (Plaza) and Stump's Market, Inc. (Stump's Market) have enjoyed a long contractual relationship in which Plaza leases certain commercial property in a shopping center to Stump's Market. Stump's Market operates a grocery store on the leased premises. Unfortunately, after a dispute regarding the calculation of rent, the existence of an option to extend the lease, and the payment of repairs to the parking garage in the shopping center, the parties found themselves embroiled in litigation. At trial, both the jury and the court found in favor of Stump's Market on the majority of its claims, both legal and equitable.

Plaza now appeals the judgment, raising three issues, but leaving the majority of the judgment unchallenged. Plaza disputes the factual finding of the validity of two options extending its lease with Stump's Market, one covering December 1, 2019 to November 30, 2024 (the 2019-2024 option) and another covering December 1, 2024 to November 30, 2029 (the 2024-2029 option). Plaza maintains that neither option is supported by consideration. Plaza also argues the 2024-2029 option violates the statute of frauds.

In the unpublished portion of this opinion, we determine Plaza never disputed the existence of the 2019-2024 option prior to or at trial. Accordingly, it waived the issue for appeal. We also conclude that substantial evidence supports the finding that the 2024-2029 option is valid. The evidence showed it was supported by consideration, and we

agree with the trial court that equitable estoppel prevents the application of the statute of frauds.

In the published portion of this opinion, we address Plaza's claim that the court's retention of jurisdiction to enforce the judgment was improper. After granting specific performance as well as other equitable remedies, the court retained jurisdiction "to make further orders, including injunctions, if necessary in the future to effectuate and or enforce the Court's judgment." Although a court may retain jurisdiction to assure compliance with its judgment (*Dawson v. West Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1044 (*Dawson*)), such an exercise of jurisdiction is "exceptional and limited to special situations." (2 Witkin, Cal. Procedure (5th ed. 2008) Jurisdiction, § 420, p. 1070.) We are concerned with the court retaining jurisdiction for the life of the lease, which may continue for another 17 years, and interjecting itself into a contractual relationship between two business entities to resolve future, hypothetical disputes. In addition, we note the trial court resolved all the issues between the parties and there appears to be little need for the court to be involved with the administration of the lease until its end. Therefore, we conclude the court's unlimited retention of jurisdiction after judgment is improper and strike that portion of the judgment. We otherwise affirm the judgment as modified.

FACTUAL AND PROCEDURAL HISTORY

The Parties

Plaza is the owner and operator of a shopping center located in Rancho Santa Fe, California. Roger Woolley owned and managed Plaza.¹ Stump's Market owns and operates Village Market, the grocery store tenant in Plaza's shopping center. Stump's Market is a small, family-owned business managed primarily by James Stump.

The Lease

The shopping center was constructed in 1974. Big Bear Super Market No. 3 (Big Bear) leased space in the shopping center from Hubert G. Larson. Big Bear operated a grocery store on the leased premises. The term of the lease, executed on May 23, 1974, was for 20 years with three additional five-year option periods. If all options were exercised, the tenancy would continue until November 30, 2009.

The rent due under the lease was 1.75 percent of Big Bear's gross sales over \$1 million, with a monthly minimum (base) rent of \$2,250. If the percentage rent exceeded \$2,250 per month, Big Bear would pay the difference on an annual basis. The lease provided that the monthly minimum rent would be automatically increased every five years during the 20-year base term, and every five years after the base term (at the beginning of each option period), using a specific cost of living index.

In June 1974, Larson transferred his interest in the lease to "Gilman Ordway and Roger S. Woolley." Through a series of subsequent transfers, the lessor under the lease became Plaza, and Plaza's interest in the lease as the lessor was not disputed at trial.

¹ Woolley has since passed away.

In 1980, five years into the tenancy, the parties negotiated a substantial change to the lease (the 1980 amendment). The 1980 amendment increased the monthly minimum rent from \$2,250 to \$3,632 for the balance of the lease term. It also increased the percentage rent from 1.75 percent of gross sales over \$1 million, to 1.88 percent of all gross sales, less the monthly minimum rent. In addition, the parties agreed that the references to cost of living adjustments to minimum rent in the lease were deleted.

In 1994, at the end of the 20-year term of the tenancy, Big Bear exercised the first five-year option to extend its tenancy. Shortly thereafter, Big Bear assigned its rights under the lease to Stump's Market. In connection with the transfer of the tenancy, the lessor and lessee negotiated further changes to the lease during early 1995.

By letter dated June 7, 1995, signed by Woolley and countersigned by Stump's Market, Plaza agreed that in addition to the current option, Stump's Market would be granted five additional five-year options. Per this 1995 agreement, Stump's Market agreed to pay an increased percentage rate of 2 percent of gross sales, due quarterly, less the minimum monthly rent of \$3,632 per month.

In 1999 and 2004, Stump's Market exercised the available five-year options to extend its tenancy. In both instances, Stump's Market sent a brief letter to Plaza stating its desire to exercise the option. On behalf of Plaza, Woolley countersigned the letters.

On March 1, 2005, in response to Stump's Market's written request, Woolley, on behalf of Plaza, provided Stump's Market with a letter stating that the remaining three options under the lease were as follows: December 1, 2009 to November 30, 2014; December 1, 2014 to November 30, 2019, and December 1, 2019 to November 30, 2024.

Damage to the Parking Garage at the Shopping Center

In September 2008, Stump met with Woolley at Woolley's house to discuss damage to the parking garage below the Village Market premises at the shopping center. Woolley believed the damage was caused by condensation from the Village Market's freezer units. Stump, however, testified that part of the damage had occurred from a leak in 2001 that he brought to Woolley's attention. Woolley informed Stump that the previous owner knew about the leak, but never repaired it.

Both Woolley and Stump received estimates from engineers to repair the damage. Woolley and Stump ultimately agreed that Stump's Market would proceed with the repairs proposed by Stump's Market's engineer, which included replacing a laminated wood structural beam with a steel beam, a slightly more costly and arguably superior option than the repair suggested by Plaza's engineer. The lease called for Stump's Market to maintain and repair the premises, but there was evidence that the parties disagreed who was responsible for the damages. Stump told Woolley that he believed that Plaza "ha[d] some responsibility" for the damage and asked Plaza to pay for some of the repair costs. Woolley agreed that Plaza would pay for one-third of the total cost of the repairs with Stump's Market advancing Plaza's share of the expense by deducting Plaza's one-third share from its quarterly percentage payments. Stump agreed that Stump's Market would advance Plaza's share of the repair costs after Woolley told him he was having cash flow

problems. Woolley then offered Stump an additional five-year option for Stump's Market for the period of December 1, 2024 to November 30, 2029.²

Also, during the September 2008 meeting, Stump's Market exercised its option for the period of December 1, 2009 to November 20, 2014 by giving Woolley a letter to that effect, which he countersigned.

A few days after the meeting, Stump sent a letter to Woolley memorializing their agreement. Woolley did not respond to the letter.

The Dispute

After Stump's Market proceeded with the repairs, it sent a quarterly report to Plaza specifying the deduction from the third quarter 2008 percentage rent payment as agreed. Woolley then hired an accountant to audit the repair cost and monitor his cost sharing, requesting that the accountant verify whether Plaza's cost sharing split was 25 percent or 30 percent. Stump's Market calculated the balance of Plaza's share of the cost of the repairs in its January 2009 quarterly report and rent payment. Woolley, however, on behalf of Plaza, sent a letter to Stump's Market stating he did not remember agreeing to pay for a portion of the repairs to the parking garage.

Stump's Market and Plaza then exchanged letters arguing their positions about:

- (1) the calculation of rent under the lease; (2) the cost sharing agreement for the repairs;
- (3) Stump's Market's exercise of the option to extend the lease until November 30, 2014

² Stump testified that Woolley declined his previous requests for two additional five-year options. However, after Stump and Woolley agreed to share the repair costs and Stump agreed to advance Woolley's portion of the repair costs, Woolley granted Stump's Market an additional five-year option.

and the rent to be paid during this period if the option was exercised; and (4) the 2024-2029 option. Eventually, Plaza served Stump with a 20-day notice to pay rent or quit, demanding \$29,140 in unpaid rent, the same amount Stump's Market withheld for Plaza's share of the repairs. In response, Stump's Market paid Plaza the disputed \$29,140 under protest and with a full reservation of rights. Stump's Market also filed suit to have the court declare the parties' respective rights under the lease and all available option periods.

Plaza responded with a letter to Stump's Market terminating the lease. As justification for its election to terminate the lease, Plaza claimed Stump's Market failed to pay a portion of its quarterly rent in the third and fourth quarters of 2008 for a total amount of \$29,140 as well as \$87,168 for the previous two years in monthly rent. Stump's Market sent Plaza a letter denying Plaza's claims. Plaza subsequently filed a cross-complaint against Stump's Market for ejectment.

The Trial

The dispute proceeded to a jury trial. The jury found predominately in favor of Stump's Market. To this end, the jury concluded that the parties intended the monthly minimum rent to be fixed at \$3,632 for the duration of Stump's Market's tenancy, including all option periods. In addition, the jury found: (1) Stump's Market committed a nonmaterial breach of the lease by failing to properly maintain and repair the premises, but otherwise was not in breach of the lease;³ (2) Stump's Market exercised its option to extend the lease through November 30, 2014; (3) Plaza agreed to pay for one-third of the

³ The repairs to the parking garage were not entirely complete at the time of trial as mold and additional water damage were found in the structure. At the time of trial, repairs to the parking garage were on-going.

repairs to the parking garage and Stump's Market was entitled to \$29,140 in damages; (4) Plaza gave Stump's Market a valid option to extend its tenancy from December 1, 2024 to November 30, 2029; (5) Plaza overcharged Stump's Market for maintenance fees for the parking garage and facilities and Stump's Market was entitled to a refund of \$87,719; and (6) both parties breached the covenant of good faith and fair dealing and were entitled to \$1 of damages.

After the jury rendered its verdict, the trial court considered the parties' respective equitable claims. The court accepted all of the factual findings and issued rulings favorable to Stump's Market on all claims in a very detailed statement of decision. Most pertinent to the issues raised in the appeal, the court declared Stump's Market had effectively exercised the option for the period December 1, 2009 to November 30, 2014, and Stump's Market holds three additional five-year options with the last option period ending November 30, 2029. The court also ordered specific performance of the lease, including the option periods if Stump's Market exercises them and remains in compliance with the lease. In addition, the court reserved its "jurisdiction to make further orders, including injunctions, if necessary in the future to effectuate and enforce the Court's judgment."

Plaza timely appealed.

DISCUSSION

Plaza raises three issues on appeal. The first two issues involve Plaza's challenge to the validity of the 2019-2024 option and the 2024-2029 option. Plaza argues that both these options are invalid as a matter of law. Next, Plaza contends the court has no

justification for retaining jurisdiction over the dispute following the judgment. We conclude Plaza's first two arguments are without merit, but agree with its final contention and modify the judgment accordingly.

I

THE 2019-2024 OPTION

In its opening brief, Plaza contends the 2019-2024 option is invalid as a matter of law and that we may review its validity de novo. Stump's Market, however, counters that Plaza did not raise the validity of this option at trial. In response, Plaza asserts it is merely arguing substantial evidence does not support the judgment. Specifically, Plaza insists Stump's Market failed to prove that the option was supported by consideration.

We agree with Plaza that an appellant can raise the contention a judgment is not supported by substantial evidence for the first time on appeal. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623.) That said, before we evaluate Plaza's argument, we need to ascertain if the validity of the 2019-2024 option was an issue at trial.

In its opening brief, Plaza lists the primary issues of the suit between Stump's Market and Plaza. The validity of the 2019-2024 option is not referenced. The validity of the 2024-2029 option, however, is mentioned.

Plaza does not cite to anywhere in the record where it challenged the validity of the 2019-2024 option at trial. Our review of the record found none either. Plaza did not offer any evidence about the validity of the 2019-2024 option. It did not even argue the 2019-2024 option was not supported by consideration during closing argument. The special verdict form given to the jury, prepared by both parties, did not ask the jury to

decide if the 2019-2024 option was valid. Again, in contrast, the jury was explicitly asked to determine the validity of the 2024-2029 option.

However, Plaza argues that it had no obligation to challenge the validity of the 2019-2024 option because Stump's Market bore the burden on that issue. We agree if the validity of this option was an issue at trial.

Plaza asserts Stump's Market placed the validity of the 2019-2024 option at issue in its original verified complaint when it alleged the rent provisions of the original lease applied to "all remaining option terms." Plaza maintains that before Stump's Market could prove that the same rent was applicable to all option periods, it first had to show that the specific options were valid. Even if we accept Plaza's argument, Plaza fails to point out where it denied these allegations. The allegations on which Plaza now relies were made in paragraph 35 of Stump's Market's original verified complaint. Plaza's verified answer to the original complaint did not contain a response to paragraph 35. Also, Plaza's verified answer included 17 affirmative defenses, most of them pled in generic fashion, but none of which directly challenged the validity of the 2019-2024 option. Irrespective of whether Stump's Market's original verified complaint placed the validity of the 2019-2024 option at issue, Plaza did not deny the subject allegations. Thus, the validity of the 2019-2024 option was not placed at issue merely because of Stump's Market's allegations in the original complaint that the rent provisions of the original lease applied to the "all remaining option terms." Plaza did not deny these allegations, and thus, the allegations should have been taken as true. (Code Civ. Proc., § 431.20, subd. (a) ["Every material allegation of the complaint . . . not controverted by

the answer, shall for purposes of the action, be taken as true."]; *Hennefer v. Butcher* (1986) 182 Cal.App.3d 492, 504 (*Hennefer*).)

Plaza also claims Stump's Market again raised the issue of the validity of the 2019-2024 option because it alleged in paragraph 81 of the first amended complaint that Plaza "failed and refused, and continue[s] to fail and refuse, to perform the conditions of the Lease on [its] part in that [it] refute[s] the continuing existence of the Lease, [Stump's Market's] right to occupy the Premises pursuant to the Lease, and the amount of rent due under the Lease for the remainder of the Lease term, including any option periods." Plaza denied these allegations in its verified answer to the first amended complaint by way of a blanket denial of all allegations in paragraph 81. Plaza argues "[t]hese allegations necessarily placed in issue whether the remaining options granted by Plaza were enforceable, including whether they were supported by consideration." We are not persuaded.

In paragraph 81, Stump's Market's alleges that Plaza failed to comply with its obligations under the lease. Plaza denied these allegations, implying that it was complying with the lease or it was justified in not doing so. The allegations in paragraph 81 mention "option periods" only in the context of Plaza disputing the amount of rent due. Plaza's denial of this allegation thus does not place the validity of the 2019-2024 option in question.

Plaza next asserts that certain allegations of Stump's Market's second amended complaint also placed the validity of the 2019-2024 option at issue. In the second amended complaint, Stump's Market alleged, among other things, that it had "a valid and

enforceable contract . . . regarding the tenancy," "[t]he terms and condition of the valid and enforceable contract are contained in a series of writings between the parties," and Plaza breached the contract by "deny[ing] the existence of the material terms and conditions of the parties' agreement and modifications to the contract." Again, even if we assume Plaza denied these allegations,⁴ it is less than clear that Plaza was disputing the validity of the 2019-2024 option. Although the allegations Plaza describes refer to the lease in general and modifications to the lease, they do not specifically mention any of the options.

While we determine that none of the allegations highlighted by Plaza put the 2019-2024 option's validity into question, we have found allegations, consistent in all versions of the complaint, which arguably placed the validity of the 2019-2024 option at issue. In the original verified complaint, Stump's Market alleged: "[O]n March 1, 2005, Mr. Woolley on behalf of [Plaza] provided [Stump's Market] with a letter clarifying that [Stump's Market] had three remaining options under the Lease: December 1, 2009 to November 30, 2014, December 1, 2014 to November 30, 2019, and December 1, 2019 through November 30, 2024." Plaza admitted these allegations were true in its verified answer. Stump's Market repeated these allegations in both its first and second amended complaints, and Plaza again admitted the allegations as true.

Plaza, however, contends these allegations only refer to Woolley sending a letter to Stump's Market. Plaza thus argues its admission merely indicates that it agrees

⁴ The court granted Stump's Market's motion to amend the first amended complaint to conform to proof and deemed Plaza's answer to the first amended complaint to be its answer to the second amended complaint.

Woolley sent the letter promising the options, but does not concede that the 2019-2024 option is supported by consideration or is otherwise valid. We do not share Plaza's narrow reading of Stump's Market's allegations.

The allegations do not merely refer to Woolley offering options. Instead, the allegations stated that, by way of letter, Woolley was clarifying that Stump's Market had three remaining options. In other words, Stump's Market was alleging that Woolley confirmed in writing the existence of three options, including the 2019-2024 option. Stump's Market was not alleging that Woolley was promising an option that required Stump's Market to provide consideration for the promise to become binding. To the contrary, Stump's Market was alleging the existence of three additional options as evidenced by Woolley's letter. Plaza admitted these allegations. If it had only intended to admit the existence of the letter, but dispute the letter's effect and/or the validity of any of the options, it should have phrased the answer accordingly.

By failing to dispute Stump's Market's allegation about the existence of the 2019-2024 option and admitting the allegation as true, Plaza failed to place the 2019-2024 option's validity at issue at trial. (*Hennefer, supra*, 182 Cal.App.3d at p. 504; Code Civ. Proc., § 431.20, subd. (a); see also 5 Witkin, Cal. Procedure, *supra*, Pleading, § 1055, p. 494 ["The effect of an express admission is to prevent the plaintiff from offering evidence on the uncontested issue."].) Having not disputed the 2019-2024 option's validity, Plaza may not now argue on appeal that Stump's Market failed to establish the existence of the option, specifically that it was supported by consideration. (See *Richmond v. Dart Industries, Inc.* (1987) 196 Cal.App.3d 869, 879.)

Our conclusion is further buttressed by Plaza's trial strategy. Plaza did not ask the jury to determine if the 2019-2024 option was valid. However, it did contest the validity of the 2024-2029 option and asked the jury to determine that option's validity. Plaza offered no evidence at trial concerning the legitimacy of the 2019-2024 option. Its trial counsel did not examine any witness about the 2019-2024 option's cogency. Further, Plaza did not argue to the jury that Stump's Market failed to prove consideration supporting the option. Simply put, we find nothing in the record showing that Plaza disputed the 2019-2024 option's validity at trial, which is consistent with our reading of Plaza's various answers.⁵

II

THE 2024-2029 OPTION

Unlike the 2019-2024 option, Plaza unmistakably contested the validity of the 2024-2029 option at trial. However, the jury found in favor of Stump's Market on the issue. Here, Plaza challenges this finding on two grounds. First, it argues the finding is not supported by substantial evidence because there was insufficient evidence of consideration. Second, Plaza maintains the 2024-2029 option violates the statute of frauds because it is not in writing and equitable estoppel does not prohibit the application of the statute of frauds in this instance. We reject these contentions.

⁵ Although we do not reach Plaza's argument that the 2019-2024 option was not supported by consideration, it appears the trial court implied that it was, finding that the parties negotiated some changes to the lease in 2004 and 2005, and Plaza granted Stump's Market the 2019-2024 option in 2005.

A. Standard of Review

When an appellant challenges the jury's findings based on insufficient evidence to support those findings, we apply the substantial evidence standard of review. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, superseded by statute on another ground as noted in *DeBerard Properties, Ltd. v. Lim* (1999) 20 Cal.4th 659, 668; *Thompson v. Tracor Flight Systems, Inc.* (2001) 86 Cal.App.4th 1156, 1166.) "In reviewing the sufficiency of evidence on appeal, we resolve all conflicts in favor of the prevailing party and we indulge all legitimate and reasonable inferences to uphold the verdict if possible. 'It is an elementary, but often overlooked principle of law, that when a verdict is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the jury. . . .' [Citation.]" (*Ortega v. Pajaro Valley Unified School Dist.* (1998) 64 Cal.App.4th 1023, 1043.) "[W]e have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom." [Citations.]" (*Leff v. Gunter* (1983) 33 Cal.3d 508, 518.)

" 'Where different inferences may reasonably be drawn from undisputed evidence, the conclusion of the jury or trial judge must be accepted by the appellate court.' " (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 301.) "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 652.) Because

Stump's Market was the prevailing party at trial, we review the evidence in a light most favorable to it. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 787.)

B. Consideration

A valid contract must be supported by consideration. (Civ. Code, § 1550.) Consideration is "[a]ny benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor" (Civ. Code, §1605.)

Here, Plaza argues there was no evidence that Stump's Market gave Plaza sufficient consideration to make the 2024-2029 option enforceable. Plaza concedes the parties agreed that Stump's Market would repair the damage to the parking garage and Plaza would pay for one-third of that cost. Plaza also admits that at the same time the parties were negotiating the payment of repair costs, Plaza granted Stump's Market the 2024-2029 option. Plaza, however, claims Stump's Market was required under the lease to repair the parking garage; thus, its payment to repair the parking garage could not constitute consideration. (See Civ. Code, §1605.)

Although Plaza has made a correct statement of law regarding consideration, its argument fails because it relies on an inference the jury clearly did not draw. At trial, there was evidence that the parties disagreed about the cause of the damage to the parking garage and who was responsible. Plaza argued the damage stemmed from the condensation build up from the Village Market's freezers. However, Stump's Market

offered evidence that Woolley admitted some of the damage was caused by a preexisting condition that the previous landlord acknowledged, said he would fix, but never did. Thus, Stump's Market asserted the damage was beyond what it was required to repair under the lease and that Plaza was at least partially responsible for the repair. Ultimately, Stump's Market agreed to pay for two-thirds of the cost of the repairs and Plaza consented to pay for one-third. At that time, Woolley mentioned to Stump that he was having "cash flow problems," and Stump agreed to front Plaza's share of the cost. In return, Woolley orally granted Stump's Market the 2024-2029 option.

On this record, we are satisfied substantial evidence supports the jury's finding that the 2024-2029 option was supported by consideration. The jury could reasonably infer that Plaza received valuable consideration because Stump's Market covered some of the repair costs that were not entirely its responsibility and agreed to advance Plaza's share of the repair costs.

C. Statute of Frauds and Equitable Estoppel

The statute of frauds requires an option to lease to be in writing. (Civ. Code, § 1624, subd. (a)(3).) However, "[e]quitable estoppel may preclude the use of a statute of frauds defense." (*Byrne v. Laura* (1997) 52 Cal.App.4th 1054, 1068.) Here, the court found that Plaza was equitably estopped from arguing the statute of frauds invalidated the 2024-2029 option. Plaza argues the court erred in applying the doctrine of equitable estoppel. We disagree.

"Whether the doctrine of equitable estoppel should be applied in a given case is generally a question of fact." (*Byrne v. Laura, supra*, 52 Cal.App.4th at p. 1068.) "The

existence of an estoppel is generally a question of fact for the trial court whose determination is conclusive on appeal unless the opposite conclusion is the only one that can be reasonably drawn from the evidence." (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305 (*Driscoll*).) "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Ibid.*) If one of the elements is missing, equitable estoppel does not apply. (*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1360.)

Plaza only challenges the court's finding on one element of equitable estoppel. It asserts the fourth element, detrimental reliance, is not present. The court found Stump's Market relied to its detriment on Plaza's promise because it "hired a contractor and paid for improvements to the [parking garage]." Similar to its argument that the 2024-2029 option is not supported by consideration, Plaza insists Stump's Market's acts cannot be deemed detrimental reliance because it already had the obligation to pay for those improvements under the lease.

Plaza asserts that the only reasonable conclusion that can be drawn from the evidence is that Stump's Market already had the obligation to pay for the repairs to the parking garage. We are not persuaded. As we discuss above, the parties disagreed about the cause of the damage to the parking garage and who was responsible for paying for its repair. Ultimately, the parties decided to share the costs of repair, with Plaza's portion

being one-third. Stump's Market also agreed to front Plaza's portion of the costs because Plaza was experiencing a cash flow problem. In exchange, Woolley, on behalf of Plaza, granted Stump's Market another five-year option. Under these facts, the court reasonably could have found detrimental reliance. Because the conclusion argued by Plaza is not the only one that can be reasonably drawn from the evidence, we determine the court's finding is conclusive. (See *Driscoll, supra*, 67 Cal.2d at p. 305.)

III

CONTINUING JURISDICTION AFTER JUDGMENT

After the jury rendered its verdict, the court agreed with the jury's findings of fact and adjudicated equitable claims. To this end, the court ordered Plaza to "perform all conditions, covenants, and promises required to be performed by Plaza under (i) the Lease as amended, and (ii) this judgment." In addition, it required Plaza to "permit Stump's Market to continue in possession of the premises" until the expiration of the current option period (Nov. 30, 2014), "unless and until the Court determines in the future that Stump's Market is no longer entitled to possession." The court also ordered Plaza to allow Stump's Market to remain in possession of the premises if it properly exercises future options, "unless and until the Court determines in the future that Stump's Market is no longer entitled to possession." The court declined to grant any injunctive relief. However, the court retained jurisdiction "to make further orders, including injunctions, if necessary in the future to implement the Court's judgment granting specific performance and declaring the parties' rights and responsibilities." The court also stated it was retaining jurisdiction "to effectuate or enforce" the judgment.

Both parties agree that "[j]urisdiction over a cause or parties after a final judgment, order, or decree is exceptional and limited to special situations." (2 Witkin, Cal. Procedure, *supra*, Jurisdiction, § 420, p. 1070.) They, however, dispute whether this case qualifies as the appropriate "special situation." Plaza argues the court's retention of jurisdiction here constitutes unjustified judicial supervision of the parties' continuing contractual relationship. Stump's Market characterizes the court's retention of jurisdiction as "limited" and proper to allow the court to enforce its judgment.

Here, the court reserved its jurisdiction to enforce the judgment, specifically its order of specific performance. "The jurisdiction of a court of equity to enforce its decrees is coextensive with its jurisdiction to determine the rights of the parties, and it has power to enforce its decrees as a necessary incident to its jurisdiction. Except where the decree is self-executing, jurisdiction of the cause continues for this purpose, or leave may be expressly reserved to reinstate the cause for the purpose of enforcing the decree, or to make such further orders as may be necessary.'" (*Day v. Sharp* (1975) 50 Cal.App.3d 904, 912, quoting *Klinker v. Klinker* (1955) 132 Cal.App.2d 687, 694.) "It follows that retention of jurisdiction by the court for the purpose of interpreting and enforcing its judgment is within the scope of declaratory relief." (*Dawson, supra*, 28 Cal.App.4th at p. 1044.) Ostensibly, this authority suggests the court did not abuse its discretion in retaining jurisdiction after the judgment. However, we are mindful that the court reserved jurisdiction over what could be the next 17 years (over 19 years from the date of judgment) if Stump's Market exercises all the options. We are unaware of any reported

case in which a court retained jurisdiction for a similar length of time to essentially govern the parties operating under a contract negotiated at arm's length.

In *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, the trial court found that defendants' negligence had resulted in damage to plaintiff in the sum of \$137,606.20 as of the date of the conclusion of the trial, but also found that defendants were liable on additional unsettled claims that the plaintiff could have to pay under an insurance policy (the defendants were found liable for negligently computing the premium rate for an insured). The trial court reserved continuing jurisdiction "to amend the judgment to insert the amount of the additional sums . . . when the amounts were determined." (*Id.* at p. 591.) Our high court determined the trial court's reservation of jurisdiction was proper and noted "[t]he claimants were known, the claims were in the process of settlement, and plaintiff's liability therefore had been adjudicated in the rescission action." (*Id.* at p. 599.) Although the opinion does not clarify when the outstanding claims would be resolved, the court was clear that the open claims would result in additional amounts plaintiff would be obligated to pay to defend and/or settle the claims. And the plaintiff would be damaged based on the defendants negligently computing the premium rates. (*Id.* at pp. 598-599.) In other words, the trial court's retention of jurisdiction to award additional damages was proper because there was no doubt that the plaintiff would incur additional damages arising from the defendants' already determined negligence.

Central and West Basis Water Replenishment Dist. v. Southern Cal. Water Co. (2003) 109 Cal.App.4th 891 (*Central*) involved a suit about the adjudication of water

rights and injunctive relief with respect to a groundwater basin. The trial court entered the parties' stipulated agreement as its judgment, but retained jurisdiction " '[t]o provide for such other matters as are not contemplated by the judgment and which might occur in the future, and which if not provided for would defeat any or all of the purposes of this judgment to assure a balanced Central Basin subject to the requirements of Central Basin Area for water required for its needs growth and development.' " (*Id.* at p. 903.) The Court of Appeal concluded the trial court's retention of jurisdiction was proper, noting "[c]ourts regularly affirm the expansive retention of jurisdiction in cases involving water rights." (*Ibid.*) The court determined the trial court properly reserved jurisdiction "to meet future problems and adapt to changed circumstances." (*Ibid.*)

In *In re Marriage of Schenck* (1991) 228 Cal.App.3d 1474, as part of a marriage dissolution proceeding, the family law court entered a deferred sale of home order, which awarded the wife exclusive occupancy of the former family residence for three years and expressly reserved judgment over its ultimate "valuation and disposition." (*Id.* at p. 1476.) The wife subsequently applied for an order for sale of the husband's interest in the residence. The law and motion department of the superior court denied the application, finding the family law court retained jurisdiction regarding the value and disposition of the residence. (*Id.* at p. 1478.) The wife appealed and the Court of Appeal affirmed, concluding the family law court properly retained jurisdiction. (*Id.* at pp. 1483-1484.)

In *Day v. Sharp, supra*, 50 Cal.App.3d 904, the plaintiff obtained an equitable decree providing her with a constructive trust on one-seventh of the residual estate of the

plaintiff's stepmother. (*Id.* at p. 907.) Twelve years later, the plaintiff filed a motion in superior court to reduce the equitable decree to a monetary judgment. The court granted the motion and reduced the judgment to a specific monetary sum. (*Id.* at pp. 908-909.) One of the defendants appealed, claiming, among other things, that the court lacked the jurisdiction to reduce the equitable decree to a money judgment. The Court of Appeal noted that when the judgment was entered in the plaintiff's case in 1961, the actual amount of the constructive trust could not be determined. As such, the Court of Appeal concluded "the trial court properly retained jurisdiction so as to do full and final justice between plaintiff and the defendants without the necessity of filing a new action." (*Id.* at p. 912.)

Although these cases are not exhaustive, they do provide a good sample of the kind of matters courts have deemed sufficiently "special" as to require the court to retain jurisdiction after judgment. Here, no facts analogous to these cases exist. The court cannot be concerned about damages being calculated in the future. (See *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.*, *supra*, 1 Cal.3d at pp. 598-599; *Day v. Sharp*, *supra*, 50 Cal.App.3d at p. 912.) Indeed, all damages arising from the claims pled have been calculated and awarded to Stump's Market. This case does not concern water rights. (See *Central*, *supra*, 109 Cal.App.4th at p. 903.) Nor is this a marriage dissolution action requiring the court to retain jurisdiction to ultimately dispose of the former family residence. (*In re Marriage of Schenck*, *supra*, 228 Cal.App.3d at pp. 1483-1484.)

Contrary to the matters in which courts have found retention of jurisdiction after judgment proper, here, there is no future event that is certain to occur that will require

modification of the judgment. Instead, it appears the trial court is concerned that Plaza will take certain steps to frustrate Stump's Market's possession of the leased premises or otherwise refuse to allow specific performance. Perhaps, the court's concern is well justified. The jury did not appear to believe the majority of Plaza's witnesses or its version of the facts. The court shared the jury's skepticism. The statement of decision implies that Plaza created excuses to terminate the lease, and Plaza was motivated by a desire to maximize profits in contradiction to its long standing, friendly business relationship with Stump's Market. Although the court might be correct that Plaza will continue to try to invent reasons to terminate the lease, there is no certainty that Plaza will do so.

We also are mindful that the court declined to grant Stump's Market injunctive relief, which could have necessitated the retention of jurisdiction. (See *Sontag Chain Stores Co. v. Superior Court* (1941) 18 Cal.2d 92, 94-95.) Although the court qualified its decision to deny injunctive relief with the prepositional phrase "at this time," this qualification relates to the possibility of the court "implement[ing] the . . . granting [of] specific performance and declaring the parties' rights and responsibilities." We are not persuaded these reasons justify the court retaining jurisdiction after judgment for such a lengthy period of time. The judgment includes an award of specific performance of the lease and all options through November 30, 2029. If Plaza refuses to comply with the order of specific performance at a future date, Stump's Market is armed with a well written, comprehensive judgment that it can seek to enforce. Thus, the court's retention

of jurisdiction, potentially for the next 17 years, is unnecessary to ensure compliance with the judgment.

Further, we are troubled by the court's reasoning that it retain jurisdiction to declare the parties' rights and responsibilities in the future. Under California law, a case normally must present an actual controversy between the parties before a court will entertain it. (*Golden Gate Bridge & Highway Dist. v. Felt* (1931) 214 Cal. 308, 316.) Here, the parties disagreed about certain terms of the lease, compliance with the lease, the calculation of rent, and the existence of an option. These issues were resolved. Neither party has indicated any issue that remains unanswered. As there are no continuing disputes, we see no justification for the court to interject itself into the contractual relationship between the two parties to resolve hypothetical, future issues. (Cf. *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170; *Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 452-453 [" 'A judicial tribunal ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition.' "].)

In essence, by retaining jurisdiction after judgment in this matter, the court is sitting as a predispute referee in the event the parties disagree in the future. To this end, the judgment includes the provision that Stump's Market is to remain in possession of the premises through the life of the lease, including all option periods if exercised, until the court "determines in the future that Stump's Market is no longer entitled to possession." We are troubled by the court's involvement in the parties' business relationship after the resolution of the action. Neither party has provided us with any authority that would

allow the court to do so. Our independent research was no more successful in uncovering any such case.

While we find the court's retention of jurisdiction after judgment to be improper on the record before us, we do nothing to disturb the court's order of specific performance. We expect Plaza to abide by the judgment. It tried to get out of the lease and lost handily. If it refuses to follow the judgment in the future, nothing in this opinion should be read as limiting the superior court from taking any and all necessary steps and ordering the proper injunctive relief, enforcing specific performance, and if necessary, retaining jurisdiction to ensure Plaza's compliance.

DISPOSITION

We strike the following from the judgment:

1. Page, lines 4 and 5 consisting of: "unless and until the Court determines in the future that Stump's Market is no longer entitled to possession."
2. Page 8, lines 7 through line 9 consisting of: "unless and until the Court determines in the future that Stump's Market is no longer entitled to possession."
3. Page 8, lines 13 through 15 consisting of: "The Court reserves jurisdiction to make further orders, including injunctions, if necessary in the future to implement the Court's judgment granting specific performance and declaring the parties' rights and responsibilities."
4. Page 10, lines 11 through 13 consisting of: "unless and until the Court determines in the future that Stump's Market is no longer entitled to possession."

5. Page 10, lines 18 through 19 consisting of: "unless and until the Court determines in the future that Stump's Market is no longer entitled to possession."

6. Page 11, lines 3 through 4 consisting of: "The Court reserves jurisdiction to make further orders, including injunctions, if necessary in the future to effectuate or enforce the court's judgment."

We affirm the judgment as modified. Each party is to bear their own costs on this appeal.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

McDONALD, J.